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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,364	09/26/2000	ANNE K. WINIEWICZ	102689-56	4774

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NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER

DALENCOURT, YVES

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,364

Applicant(s)

WINIEWICZ ET AL.

Examiner

Yves Dalencourt

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/20/00</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to communication filed on 09/26/2000.

The preliminary amendment filed on 01/05/2001 has not been entered. The Ethernet network 32 was not found on pages 78 and 79 as mentioned on the amendment.

Information Disclosure Statement

The information disclosure statement filed on September 26, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The enclosed Information Disclosure states that the references were previously cited in US Application No. 09/633,675, but there were no copies of such references in that application.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Therefore, " the present invention " (page 223, line 2) is redundant. It is suggested to start abstract with -- A method and apparatus for managing --.

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Also, "comprise" (page 223, line 5) is implied and should be avoided.

The subscript at the bottom of the abstract " 907002.1 " should be deleted.

The abstract is too long; it should be limited to 150 words.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 1 and 23, the limitations of "sending the first data summary from the first card to the central process periodically at the first period; and ceasing to send the first current statistical data sample from the first card to the central process periodically at the first period (claims 1 and 23, lines 8 – 11) are not enabled. As described in the specification (paragraph bridging page 2, line 25 through page 3, line 8), the processes stop sending the current statistical data samples from the first card to the central process periodically at the first period, based on the detected predetermined condition; and then send the data summaries on the more frequent time interval (e.g. every 15 minutes or first period as claimed). It has not been described in the specification how the

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method steps, as claimed in claims 1 and 23, are taken place. Therefore, one skilled in the art would not know how to make and/or use the invention.

Claims 2 – 22 and 24 – 30 are necessarily rejected as being dependent upon the rejection of claims 1 and 23.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 23, the limitations of "sending the first data summary from the first card to the central process periodically at the first period; and ceasing to send the first current statistical data sample from the first card to the central process periodically at the first period (claims 1 and 23, lines 8 – 11) are confusing. It is not clear how the last two steps of claims 1 and 23 are taken place.

Claims 1 – 30 are rejected with art as best understood by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application

filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 11 – 16, 23 – 25, and 29 – 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Fletcher et al (US 6,108,782; hereinafter Fletcher).

Regarding claims 1, 12 – 13, 16, 23 – 24, and 29 – 31, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which comprises the steps of sending a first current statistical data sample from a first card to a central process within the network device periodically at a first period; sending a first data summary from the first card to the central process periodically at a second period (col. 8 – 15; Fletcher discloses agents running on interface cards for collecting network statistical data for MIB variables requested); detecting a predetermined condition (col. 15, lines 39 – 47); sending the first data summary from the first card to the central process periodically at the first period (); and ceasing to send the first current statistical data sample from the first card to the central process periodically at the first period (col. 15, lines 48 – 59; Fletcher discloses that the collector times-out an agent if it does not receive a response to a series of multicast polls for a prolonged period). Claim 23 adds the limitations of a plurality of cards (see col. 15, lines 61 – 64).

Regarding claims 4 and 25, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprising the steps of gathering the first current statistical data sample on the first card periodically at the first period; and adding the first current statistical data sample to the first data summary each time the first current statistical data sample is gathered (see col. 8 – 15, Fletcher discloses that statistical data is gathered periodically).

Regarding claim 11, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, wherein the second period is longer than the first period (col. 15 – 20).

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Regarding claim 14, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of receiving the first current statistical data sample from the first card at the central process; storing the received first current statistical data sample in a file in non-volatile memory; retrieving the file from the non-volatile memory through an export process; and sending the file from the network device to an external file system (paragraph bridging col. 20, line 64 through col. 21, line 12).

Regarding claim 15, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, wherein the export process is a file transfer protocol (FTP) client process and wherein sending the file from the network device to an external file system comprises: issuing an FTP push (col. 4, lines 55 – 67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 – 3, 5 – 10, 17 – 22, 26 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al (US 6,108,782; hereinafter Fletcher).

Regarding claims 2 - 3, 7 – 10, 26 – 28, Fletcher teaches all the limitations in claim 1, but fails to specifically teach the steps of sending a second current statistical data sample from a second card to the central process within the network device periodically at the first period; sending a second data summary from the second card to the central process periodically at the second period; detecting the predetermined condition; sending the second data summary from the second card to the central process periodically at the first period; and ceasing to send the second current statistical data sample from the second card to the central process periodically at the first period as claimed.

However, Fletcher does disclose that collectors and agents may be designed to operate effectively with a number of different network interface cards (NICs) and NOS architectures and a number of different management applications. Such cards can be attached to different network segments and recorded information about those segments (paragraph bridging col. 15, line 61 through col. 16, line 2). It would be advantageous for the central process to be able to collect data from all the cards located in a network device in order to receive accurate information of the network segments.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that Fletcher's device is at least functionally equivalent to the claimed invention because Fletcher suggests using a number of different network interface cards (NICs), and NOS architectures and a number of different management applications for the purpose of allowing the management system to be adapted to different operating environments while localizing the interoperability design issues to the module(agent or collector) necessary for interface with that system.

Regarding claim 5, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of gathering the second current statistical data sample on the second card periodically at the first period; and adding the second current statistical data sample to the second data summary each time the second current statistical data sample is gathered (see col. 8 –15, Fletcher discloses that statistical data is gathered periodically).

Regarding claim 6, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of gathering the second current statistical data sample on the first card periodically at the first period; and adding the second current statistical data sample to the second data summary each time the second current statistical data sample is gathered (col. 8 - 15).

Regarding claims 17 - 22, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of receiving the first current statistical data sample from the first card at the central process; storing the received first current statistical data sample in a first file in non-volatile memory, wherein the first file corresponds to a first string name associated with the first current statistical data sample; receiving the second current statistical data sample from the second card at the central process; comparing a second string name associated with the second current statistical data sample with the first string name; storing the received second current statistical data sample in the first file if the second string name matches the first string name; and storing the received second current statistical data sample in a second file if the second string name does not match the first string name (see col. 15 – 18).

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tams et al (US 2003/0069952A1) discloses methods and apparatus for monitoring, collecting, storing, processing, and using network traffic data of overlapping time periods.

Wolf et al (US 6,278,694) discloses collecting and reporting monitoring data from remote network probes.


Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (703) 308-8547. The examiner can normally be reached on M-TH 7:30AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt


June 23, 2004


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100